

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

v.

JOSHUA MCCULLOUGH, et al.,

Defendants.

CRIMINAL CASE NO.

1:11-cr-136-JEC-AJB

ORDER

This case is before the Court on the Magistrate Judge's Report and Recommendations [310, 333, 489, 493, 495, 509, 618] recommending denying defendants Joshua McCullough and James McKenzie's Motions to Dismiss the Indictment [270, 306], denying McKenzie's Motions to Suppress Evidence [112, 294, 307, 308, 315, 316], denying the Whortons' Motions to Suppress Evidence [125, 163], denying the Autrys' Motions to Suppress Evidence [143, 200, 226, 227, 230, 247, 249], denying McCullough's Motions to Suppress Evidence [153, 154, 155], denying defendant Holly Autry's Motion to Suppress Statements [199], denying defendant Sandra Whorton's Motion to Suppress Evidence Seized During the Searches of 1396 Commerce Drive, Suites A and B [183], denying defendant Holly Autry's Motions to Suppress Statements [142, 199], denying defendant Joshua McCullough's Motion to Suppress Evidence [156], and denying Bunch's Motions to Suppress the search of 436 Hood Road, as adopted by Ira Butler [146, 196], Bunch's Motion to

Suppress the search of 1850 Flat Rock Road [147], Bunch's Motion to Suppress Statements [148], Bunch's Supplemental Motion to Suppress Evidence and Statements [205], Butler's Motion to Suppress Evidence [130], Butler's Motion to Suppress Evidence from the December 8, 2010 search of 436 Hood Road [213], denying James McKenzie's Motion to Suppress Identification Testimony [288], granting Holly Autry's Motions to Supplement the Record, [361, 382], and denying the Motion to Reconsider the magistrate judge's previous R&R [361, 382].

On August 19, 2011, defendant McCullough filed Objections [318], and on August 22, 2011 defendant McKenzie filed Objections [325] to the Report and Recommendation [310]. On September 12, 2011, Sandra Whorton filed Objections [347] to the Report and Recommendation [333]. On September 14, 2011, Jimmy Ray Whorton filed Objections [348] to the Report and Recommendation [333]. On September 29, 2011, Joshua McCullough filed Objections [358] to the Report and Recommendation [333]. On September 30, 2011, Karry Autry filed Objections [359] to the Report and Recommendation [333]. On September 30, 2011, Holly Autry filed Objections [360] to the Report and Recommendation [333]. On September 30, 2011, James McKenzie filed Objections [362] to the Report and Recommendation [333]. On September 30, 2011, Paul Bunch filed Objections [363, 364] to the Report and Recommendation [333]. On September 28, 2012, Sandra Whorton filed Objections [491] to the report and recommendation [489]. On October 23, 2012, Joshua McCullough filed Objections [498]

to the Report and Recommendation [493]. On February 19, 2013, defendant Bunch filed Objections [532] to the Report and Recommendation [509]. On October 16, 2013, defendant Butler filed Objections [602] to the Report and Recommendation [509]. On February 11, 2014, defendants James McKenzie and Holly Autry filed Objections to the Report and Recommendation [618].¹ Finally, on April 2, 2014, defendant Bunch filed a motion to adopt a co-defendant's objections [666], which this Court now **GRANTS**.

The Court has reviewed the Report and Recommendations [310, 333, 489, 495, 509] and finds the magistrate judge's conclusions to be well-founded. As to one matter--the request by certain defendants for a *Franks* hearing as to the search warrant for 166 Alexander Drive--in order to ensure that the record is complete, the Court will request that the magistrate judge conduct a hearing on that matter. Otherwise, all other objections are overruled and the R&Rs are adopted, as written.

IT IS HEREBY ORDERED that the Court **ADOPTS** the Magistrate Judge's Report and Recommendations [310] **DENYING** the motions of defendants McCullough and McKenzie to Dismiss the Indictment [270, 306].² The Court **ADOPTS** his Report and Recommendation [333] as to its

¹ Defendant James McKenzie also filed a Supplement to Objections to the Report and Recommendation [618] and Motion to Adopt [654], which this Court grants.

² Motions filed by defendant Sandra Whorton [124, 125, and 183] and defendant Jimmy Ray McWhorter's motions [163], on which the magistrate judge made recommendations in R&Rs found at Document

recommendation of the denial of the motions for suppression presented therein, and the grounds for denial of those motions, except that the Court directs that a *Franks* hearing be held as to all defendants who requested such a hearing as to the warrant affidavit relating to 166 Alexander Drive. (See R&R [333] at 59-60). The Court **ADOPTS** the magistrate judge's Report and Recommendation [493] recommending the denial of defendant Joshua McCullough's motion to suppress evidence as to the search of 2220 Jodeco Road [155]. The Court **ADOPTS** the magistrate judge's Report and Recommendation [495] recommending the denial of defendant Holly Autry's motion to suppress statements [142, 199]. The Court **ADOPTS** the magistrate judge's Report and Recommendation recommending denial of motions to suppress filed by defendants Bunch and Butler [146, 196, 147, 148, 205, 130, 213]. The Court **ADOPTS** the magistrate judge's Report and Recommendation [618] recommending the denial of defendant McKenzie's motion to suppress identification testimony [288], the granting of defendant Holly Autry's motion to supplement the record [361, 382], the denial of the motions to reconsider the prior R&R [361, 382], except as to that part of the R&R rejecting defendants' request for *Franks* hearing as to the warrant affidavit relating to 166 Alexander Drive.

In short, the Court concurs as to all recommended rulings by the magistrate judge in his thorough and well-reasoned R&Rs, except that,

333,489, are no longer pending, as the indictment against Mrs. McWhorter was later dismissed and Mr. McWhorter has pled guilty and been sentenced.

to complete the record, the Court directs that a *Franks* hearing be held as to all defendants who requested such a hearing as to the warrant affidavit relating to 166 Alexander Drive.

It is further Ordered that defendant Karry Autry's Motion to Adopt the Co-Defendant, Holly Autry's, Objections to the Report and Recommendation [662] and defendant Paul Bunch's Motion to Adopt Co-Defendant's Objections to the Magistrate Judge's Non-Final Report and Recommendation [666] are **GRANTED**.

To render easier the Clerk's ability to properly record what motions are left to be determined after a *Franks* hearing, any defendant having requested such a hearing as to the warrant affidavit relating to 166 Alexander Drive should perfect that request by refiling this part of their previous motions as a separate document setting out this request. Defendants shall do by **SEPTEMBER 5, 2014**. In all other regards, however, the magistrate judge's denial of motions to suppress or rulings on other motions is **ADOPTED**.

SO ORDERED this 13th day of AUGUST, 2014

/s/ Julie E. Carnes
JULIE E. CARNES
Circuit Judge, sitting by designation
as District Judge